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In the Supreme Court of the United States

OCTOBER TERM, 1983

SHELL OIL COMPANY,

Petitioner,

V.

MARY OLSEN, ARGONAUT INSURANCE COMPANY, CHRISTINE W. CARVIN, and GORDON DAVIS WALLACE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITES STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN O. CHARRIER, JR.
ROBERT T. LEMON, II
JONES, WALKER, WAECHTER, POITEVENT, CARRERE & DENEGRE
225 Baronne Street, 28th Floor
New Orleans, Louisiana 70112
Telephone: (504) 581-6641

Counsel for Petitioner

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

QUESTIONS PRESENTED FOR REVIEW

Petitioner applies for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit for review of the following questions:

I. Whether the Court of Appeals erred as a matter of law in granting the LHWCA compensation carrier an award larger than that amount for which petitioner was held liable in tort to certain of the claimants?

(a) In an action by the LHWCA compensation carrier against a vicariously liable third-party tortfeasor for reimbursement for workmen's compensation benefits paid, whether the LHWCA compensation carrier is entitled to an award in excess of the judgment in tort against the third-party tortfeasor? or

(b) Whether the vicariously liable third party tortfeasor's liability to the LHWCA compensation carrier for reimbursement of workmen's compensation benefits paid is limited to the amount of the tort award against the third party tortfeasor?

II. Whether the Court of Appeals erred as a matter of law in obligating petitioner to assume responsibility for administration and distribution of all of the LHWCA compensation carrier's future workmen's compensation liability to claimants arising out of the casualty?

III. Whether the Court of Appeals erred as a matter of law in awarding claimants prejudgment interest in an action arising under the Outer Continental Shelf Lands Act?

STATEMENT OF INTERESTED PARTIES

I, John O. Charrier, Jr., counsel of record for Petitioner, Shell Oil Company, certify that the following listed persons have or may have an interest in the outcome of this case:

1. Shell Oil Company and Travelers Insurance Company

2. Movible Offshore, Inc., Teledyne Movible Offshore, Teledyne Inc., and Pacific Indemnity Company

3. Argonaut Insurance Company

4. Mary Olsen

5. Christine Carvin

6. Gordon Davis Wallace

JOHN O. CHARRIER, JR.
ROBERT T. LEMON, II

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

SHELL OIL COMPANY,

Petitioner

versus

MARY OLSEN, CHRISTINE W. CARVIN, GORDON W. WALLACE, and ARGONAUT INSURANCE COMPANY

Respondents

PETITION FOR WRIT OF CERTIORARI

DECISIONS BELOW

This matter has had a complex and tortured legal history. The matter was first tried, and all appeals exhausted, on liability. The damages issue was then tried, and this application pertains to that issue.

LIABILITY

DISTRICT COURT—

1. The opinions of the United States District Court for the Eastern District of Louisiana [Minute Entry (June 6, 1974) and Minute Entry (July 15, 1975) are not reported.

COURT OF APPEALS—

2. *Olsen v. Shell Oil Co.*, 561 F.2d 1178 (5th Cir. 1977), *rehearing en banc denied*, 565 F.2d 163 (5th Cir. 1977) [initial decision on liability affirming negligence of Movible Offshore, Inc.]

3. *Olsen v. Shell Oil Co.*, 574 F.2d 194 (5th Cir. 1978) [certification to Louisiana Supreme Court of questions of Louisiana strict liability and its effect on Shell Oil Co.]

4. *Olsen v. Shell Oil Co.*, 365 So.2d 1285 (La. 1978) [certified questions answered finding Shell Oil Co. strictly (vicariously) liable]

5. *Olsen v. Shell Oil Co.*, 595 F.2d 1099 (5th Cir. 1979) [final decision on liability]

QUANTUM (DAMAGES)

DISTRICT COURT—

6. The opinion of the United States District Court for the Eastern District of Louisiana [minute entry (April 22, 1982)] is not reported.

COURT OF APPEALS—

7. *Olsen v. Shell Oil Co.*, 708 F.2d 976 (5th Cir. 1983), *rehearing en banc denied* (September 26, 1983)

JURISDICTION

This appeal raises questions of law under the United States Longshoremen's and Harbor Workers' Compensation

Act, 33 U.S.C. §901 *et seq.*, and the Outer Continental Shelf Lands Act, 43 U.S.C. §1333 *et seq.*

The decision of the United States Court of Appeals for the Fifth Circuit at issue was entered on July 5, 1983. The Application for Rehearing En Banc was denied by the Court of Appeals in an order entered on September 26, 1983.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

This Petition raises issues under the following provisions of the United States Longshoremen's and Harbor Workers' Compensation Act [LHWCA] and the Outer Continental Shelf Lands Act [OCSLA]:

LHWCA 33 U.S.C. §933

> **§933. Compensation for injuries where third persons are liable**
>
> **(a) Election of remedies.** If on account of a disability or death for which compensation is payable under this Act, the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.
>
> **(b) Acceptance of compensation acting as assignment.** Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner of Board shall operate as an assignment to the employer of all right of the

person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such award.

(c) Payment into section 944 fund operating as assignment. The payment of such compensation into the fund established in section 44 [33 U.S.C.S. §944] shall operated as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee. Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee. Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 7 [33 U.S.C.S. §907];

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 7 [33 U.S.C.S. §907], to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative, less one-fifth of such excess which shall belong to the employer.

(f) Institution of proceedings by person entitled to compensation. If the person entitled to compensation institutes proceedings within the period prescribed in section 33(b) [subsec. (b) of this section] the employer shall be required to pay as compensation under this Act, a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the amount recovered against such third person.

(g) Compromise obtained by person entitled to compensation. If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this Act, the employer shall be liable for compensation as determined in subdivision (f) only if the written approval of such compromise is obtained from the

employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made.

(h) Subrogation. Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be surbrogated to all the rights of the employer under this section.

(i) Right to compensation as exclusive remedy. The right to compensation or benefits under this Act shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

(Mar. 4, 1927, ch 509, § 33, 44 Stat. 1440; June 25, 1938, ch 685, §§ 12, 13, 52 Stat. 1168; Aug. 18, 1959, P.L. 86-171, 73 Stat. 391; Oct. 27, 1972, P.L. 92-576, § 15(f)-(h), 86 Stat. 1262).

OCSLA 43 U.S.C. §1333

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction. (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or

temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) (A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after the date of enactment of this subparagraph [enacted Sept. 18, 1978], the President shall establish procedures for setting [setting] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States

shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshoremen's and Harbor Workers' Compensation Act applicable; definitions. With respect to disability or death of an employee resulting from any injury occurring as the result of operations, conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C.S. §§901 et seq.] For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C.S. §§901 et seq.] under this section—

(1) The term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

This Petition also raises issues under the Federal Interst Statute:

Federal Interest Statute 28 U.S.C. §1961

§1961. Interest

(a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

STATEMENT OF THE CASE

On May 6, 1970, several persons were either killed or severely injured when a water heater exploded in the living quarters (offshore modular unit) of a fixed drilling platform. Movible Offshore, Inc. ("Movible") was the owner of the water heater and the offshore modular living quarters. Movible was also the employer of those injured or killed in this explosion. The fixed drilling platform was owned by Shell Oil Company ("Shell"), and was located on the Louisiana Outer Continental Shelf.

Following this casualty, Argonaut Insurance Company, Movible LHWCA's workmen's compensation carrier, paid compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* These compensation benefits were paid without entry of a formal award by the Deputy Commissioner, because Movible did not contest the claimants' right to compensation. Thereafter, Argonaut filed suit against Shell Oil Company and other defendants, seeking reimbursement for the workmen compensation benefits paid to the claimants and other Movible employees injured as a result of the explosion. Several of those injured, as well as the representatives of those killed, also filed separate suits against Shell Oil Company and other defendants.[1]

On June 6, 1974, and again on July 15, 1975, Chief Judge Frederick J. R. Heebe of the United States District Court for the Eastern District of Louisiana, rendered judgment in these consolidated actions on the issue of liability in favor of Shell Oil Company. The District Court found that the active negligence of Movible was the proximate cause for the explosion and resulting injuries and deaths.

On appeal, *Olsen v. Shell Oil Co.*, 561 F.2d 1178 (5th Cir. 1977), *reh. en banc den.*, 565 F.2d 164 (5th Cir. 1977), the United States Court of Appeals for the Fifth Circuit

[1] The plaintiffs in these consolidated cases are: (a) Mrs. Mary Olsen on behalf of the children of her marriage to the deceased Kenneth Mahaney, suing for the wrongful death of Kenneth Mahaney; (b) Mrs. Christine W. Carvin, on behalf of herself and the children of her marriage to the deceased Joseph P. Carvin, suing for the wrongful death of Joseph R. Carvin; (c) Mr. Gordon D. Wallace, suing in his own right for personal injuries; (d) Argonaut Insurance Company, Movible's workmen's compensation carrier, suing for reimbursement of workmen's compensation benefits paid to several claimants injured or killed, noninclusive of Mahaney, Carvin and Wallace. Argonaut intervened as a party plaintiff in these three actions.

affirmed the District Court's findings and conclusions that the explosion was proximately caused by the active negligence of Movible. However, the Court of Appeals then certified to the Louisiana Supreme Court certain questions of Louisiana law,[2] and its effect on Shell Oil Company as owner of the platform. *Olsen v. Shell Oil.*, 574 F.2d 194 (5th Cir. 1978). The Louisiana Supreme Court, *Olsen v. Shell Oil Co.*, 365 So.2d 1285 (La. 1978), contrary to then-established precedent, extended the doctrine of Louisiana strict liability and resolved the certified questions against Shell Oil Company, and concluded that Shell Oil Company was strictly (vicariously) liable, as owner of the fixed drilling platform, for the explosion and resulting injuries and deaths, notwithstanding that the active negligence of Movible was the proximate cause of the casualty.

Thereafter, the United States Court of Appeal, *Olsen v. Shell Oil Co.*, 595 F.2d 1099 (5th Cir. 1979), resolved the remaining questions of liability, and remanded these consolidated cases to the District Court for trial on the issue of quantum (damages).

The issue of quantum was tried by Special Magistrate on December 18-21, 1979. On June 29, 1981, the Special Magistrate entered its proposed findings and recommendations. Thereafter, the United States District Court for the Eastern District of Louisiana, Chief Judge Frederick J. R. Heebe, affirmed and modified the Special Magistrate's proposed findings and recommendations by minute entry dated April 22, 1982. The District Court found Shell Oil Company liable in tort in an amount less

[2] Included among the questions was the Louisiana tort doctrine of strict liability under the Louisiana Civil Code Art. 2322, and its application to the owner of a fixed drilling platform located on the Louisiana Outer Continental Shelf.

than the total workmen's compensation benefits paid by Argonaut to the injured claimants and the decedents' representatives.[3] Nevertheless, the District Court held that Argonaut, as the LHWCA workmen's compensation carrier, was entitled to complete reimbursement from Shell Oil Company for all workmen's compensation benefits paid in the past, as well as all workmen's compensation benefits to be paid in the future.

On appeal, *Olsen v. Shell Oil Co.*, 708 F.2d 976 (5th Cir. 1983), the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment and award on the issue of quantum. Specifically, the Court of Appeals affirmed the District Court's holding (1) that Shell Oil Company was to completely reimburse Argonaut for all workmen's compensation benefits paid to the claimants, notwithstanding that Shell Oil Company's liability in tort to these claimants was less than those amounts paid as workman's compensation benefits; and (2) that Shell Oil Company was to assume the administrative responsibility for payment of any and all workmen's compensation benefits and medical expenses which would have to be paid to these claimants in the future. The United States Court of Appeals for the Fifth Circuit thereafter denied rehearing en banc on September 26, 1983.

Shell now petitions for a writ of certiorari from this judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

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[3] For example, the District Court awarded Mary Olsen only $16,000. However, Argonaut's compensation obligation to the Olsen family was much greater than this amount.

ARGUMENT

I. THE COURT OF APPEALS DECISION IS CONTRARY TO THE STATUTORY PROVISIONS OF THE LHWCA AND THE DECISIONS OF THIS COURT INTERPRETING THAT STATUTE.

Petitioner, Shell Oil Company's liability is encompassed by a single judgment in tort for damages in each of the personal injury and death cases; accordingly, petitioner's liability to the LHWCA compensation carrier (Argonaut) for reimbursement of workmen's compensation benefits paid to claimants is limited to the amount of the tort judgment. The Court of Appeals' decision to the contrary is in direct conflict with the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*

It is an elementary principle of workmen's compensation law that the compensation lien comes out of the judgment—the injured employee is permitted to retain the compensation subject to reimbursement to the employer out of the tort damages collected from the negligent third party tortfeasor. LHWCA §33(b,e,h), 33 U.S.C. §933 (b,e,h). *Haynes v. Rederi and A/S ALADDIN,* 362 F.2d 345 (5th Cir. 1966); *Brock v. Baroid Div., National Lead Co.,* 339 F.Supp. 728 (W.D. La. 1972). See also *Caldwell v. Ogden Sea Transport, Inc.,* 618 F.2d 1037 (4th Cir. 1980). A corollary to this principle is that the negligent third party tortfeasor can never be held liable for reimbursement to the compensation carrier for more than the amount of damage for which it is held liable in tort. *Hinson v. S/S PAROS,* 461 F.Supp. 219, 223 (S.D. Tex. 1978). See LHWCA §33(b,e,h), 33 U.S.C. §933 (b,e,h). Thus, LHWCA compensation carrier

Argonaut's compensation lien is limited to the amount of the tort judgment against third party Shell Oil Company. *Hinson v. S/S PAROS*, 461 F.Supp. 219, 222-23 (S.D. Tex. 1978).

LHWCA §33 (33 U.S.C. §933) governs the rights of the employee, the employer, and the compensation carrier against third persons whose negligence was the cause for the employee's injury. Section 33 of the Act grants the employer (or the employer's compensation carrier) the right to bring an action for reimbursement against the third person in those instances where the employee fails to bring such an action on his own behalf. See LHWCA §33(e & f), 33 U.S.C. §933 (e & f). It is plain from the face of the statute that the negligent third party tortfeasor's liability is encompassed and limited by the tort damages due the employee. Compare LHWCA §33 (b,e,f,h,i), 33 U.S.C. §933 (b,e,f,h,i) with LHWCA §5(a), 33 U.S.C. §905(a).

This Honorable Court has held that the objective of the reimbursement provisions of the LHWCA [§33 (33 U.S.C. §933)] is that "of placing the burden ultimately on the company whose fault caused the injury." *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 376 U.S. 315, 324 84 S.Ct. 748, 754 (1964). See *Federal Marine Terminals Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 420 n.22, 89 S.Ct. 1144, 1153 n.22 (1969). Thus the intent of §33 is to force the actively negligent third party which causes injury to reimburse the non-negligent employer (or the employer's compensation carrier) whose only responsibility for the injury is the compensation liabilitly imposed by the statute. See LHWCA §5, 33 U.S.C. §905.

The decision of the United States Court of Appeals for the Fifth Circuit in this instance is completely contrary

to the objective of LHWCA §33. The Court of Appeals decision permits the employer (or the employer's compensation carrier) to recover from the third party tortfeasor over and above that to which the third party tortfeasor is held liable in tort. Moreover, the Court of Appeals decision permits the employer (or the employer's compensation carrier) to recover in excess of the tort judgment against a *non-negligent* vicariously liable third party. The decision of the Court of Appeals does not "place the burden ultimately on the company whose default caused the injury", particularly in this instance where the negligent party was the claimants' LHWCA employer, Movible. Therefore, petitioner submits the Court of Appeals decision is completely without statutory authority, nor is it in compliance with the statutory objective of the LHWCA.

Nor is the Court of Appeals decision compatible with the decision of this Honorable Court in *Federal Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 89 S.Ct. 1144 (1969). There, the United States Supreme Court held LHWCA §33 was not the exclusive source of the employer's remedies against negligent third parties for reimbursement of workmen's compensation benefits. In *Burnside*, this Honorable Court held that the employer (or his compensation carrier) could proceed against the *negligent* third party on the theory that the third party breached some duty owed directly to the employer. The *Burnside* remedy applies only to actively negligent third party tortfeasors; the *Burnside* remedy does not apply to the vicariously liable third party, particularly where the actively negligent party is the LHWCA employer. Moreover, the *Burnside* remedy is limited to those situations where state law limits recovery in tort (the applicable Louisiana

law in this instance imposes no such limitation).[4]

The Court of Appeals decision is contrary to *Burnside*. Unlike the situation in Burnside, Shell Oil Company breached no independent duty owed LHWCA employer Movible, or its compensation carrier, Argonaut. Instead, this casualty was proximately caused by the active negligence of the LHWCA employer, Movible. Petitioner, Shell Oil Company, only was found strictly (vicariously) liable under a strained interpretation of Louisiana law.[5] Therefore, petitioner submits the Court of Appeals erred in holding a non-negligent, vicariously liable third party liable for workmen's compensation benefits in excess of the tort judgment against said third party. Therefore, petitioner submits the Court of Appeals decision has no statutory or jurisprudential basis, and that the Court of Appeals decision should be reversed.

II. THE LHWCA IMPOSES NO OBLIGATION ON THE THIRD PARTY TORTFEASOR TO ASSUME THE ADMINISTRATIVE RESPONSIBILITY FOR THE DISBURSEMENT OF FUTURE WORKMEN'S COMPENSATION BENEFITS. THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN OBLIGATING PETITIONER TO ASSUME THE ADMINISTRATION OF FUTURE WORKMEN'S COMPENSATION CLAIMS AGAINST THE COMPENSATION CARRIER ARGONAUT.

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[4] On its facts, *Burnside* applies only to those actions between the vessel and the stevedore-employer, and is based exclusively on federal maritime law. In the instant action, the injuries and deaths occurred on a fixed drilling platform located on the Louisiana Outer Continental Shelf; the applicable law is Louisiana law, adopted as surrogate federal law pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. §1333.

[5] Louisiana Civil Code Art. 2322.

The District Court imposed upon petitioner the obligation to undertake the payment and administration of the existing claims against Argonaut for workmen's compensation arising out of the casualty; the Court of Appeals affirmed this decision. In effect, the judgment forces petitioner, an oil company, to enter into the business of an American casualty insurance company. Under the Court of Appeals' decision, petitioner will now have to assume the burden of issuing weekly compensation checks, paying the various medical bills which are submitted by the claimants, and monitoring the continued viability of the compensation claims. Such judicial action on the part of the Court of Appeals is without statutory authority, and imposes an unreasonable financial and administrative burden upon petitioner.

Moreover, the Court of Appeals decision imposes a greater obligation than the straightforward award of a money judgment to the compensation carrier; instead, the Court of Appeals decision additionally (and improperly) places the cost of administration of the compensation claims on petitioner, rather than the compensation carrier. Nowhere does the LHWCA authorize the employer/compensation carrier to recover (in addition to the workmen's compensation benefits) the cost of administration of the compensation claims from the third party. The statutory scheme behind LHWCA makes clear that the compensation carrier will continue to be liable to the workmen's compensation claimants for future benefits, even in the case of the claimants' successful suit against a third person for money damages, and even in the case of the compensation carrier's successful suit for reimbursement against the negligent third person. See LHWCA §33(f), 33 U.S.C. §933(f). Thus, the statute places the on-going costs of administration of the compensation claim squarely on the

compensation carrier, not on the third party tortfeasor.

The Court of Appeals' decision affirming the District Court's judgment also works as an "open-ended judgment" against petitioner in that (1) it imposes an infinite period for which petitioner will be liable to pay damages, and (2) the judgment, as written, is not for a sum certain, contrary to well-established principles of tort law. In effect, the Court of Appeals has given the LHWCA compensation carrier "carte blanche" recovery against petitioner with respect to *any* future payments which Argonaut may decide to incur. The potential for abuse is readily apparent.

This "carte blanche" recovery for the LHWCA compensation carrier is completely contrary to the established view of the courts. The law does not permit an infinite period of liability for prospective damages; the law permits only a finite period, the reason being that only then can damages be calculated with any degree of reasonable precision. The "maintenance and cure" cases best illustrate this point. See *Farrell v. United States*, 336 U.S. 511, 519, 69 S.Ct. 707, 711 (1949); *Calamar S.S. Corp. v. Taylor*, 303 U.S. 525, 531, 58 S.Ct. 651, 655 (1938). In the "maintenance and cure" cases, the courts impose a limitation of "maximum cure" on the extent of the seaman's ability to recover maintenance and cure: the seaman can recover up until the point his condition reaches maximum cure. The rationale for this limitation on the seaman's recovery is that any damages beyond this period of maximum care are not capable of precise measurement.

The similarity of maintenance and cure to workmen's compensation logically dictates that the same rationale apply here—petitioner Shell should not be held liable beyond that period of time in which damages can be

calculated with reasonable precision. The prohibition against the award of speculative damages is well-settled. See *Story Parchment Co. v. Patterson Parchment Paper Co.*, 282 U.S. 555, 562-63, 51 S.Ct. 248, 250 (1931); *Robins Drydock & Repair Co. v. Flint*, 275 U.S. 303, 48 S.Ct. 134, 72 L.Ed. 290 (1927). See also *Compania Pelineon De Navegacion S.A. v. Texas Petroleum Co.*, 540 F.2d 53, 55-56 (2d Cir. 1976); *Aldon Industries, Inc. v. Don Myers & Associates, Inc.*, 517 F.2d 188, 191 (5th Cir. 1975); *Travelers Indemnity Co. v. Peacock Construction Co.*, 423 F.2d 1153, 1157 (5th Cir. 1970).

Moreover, the Court of Appeals decision is without statutory basis; there is nothing in the LHWCA permitting the court to obligate petitioner to pay any and all claims for workmen's compensation benefits which might arise in the future. Nor is there anything in the statute permitting the court to obligate petitioner to administer the future workmen's compensation claims of the claimants. Indeed, there is contrary authority. See *Hinson v. S/S PAROS*, 461 F.Supp. 219, 223-24 (S.D. Tex. 1978) [compensation carrier barred from recovery of total projected amount of workmen's compensation benefits that would have to be paid in future]. Accordingly, petitioner submits the Court of Appeals decision obligating petitioner to assume the role of the compensation carrier is in error, and should be reversed.

III. THE COURT OF APPEALS DECISION AFFIRMING THE AWARD OF PREJUDGMENT INTEREST IN AN OCSLA CASE IS A COMPLETE DEPARTURE FROM CONTROLLING PRECEDENT ON THIS ISSUE, AND IS CONTRARY TO FEDERAL LAW AS APPLIED UNDER OCSLA.

Under the Outer Continental Shelf Lands Act, (OCSLA), 43 U.S.C. §1333 *et seq.*, federal law is the substantive law to be applied on the Outer Continental Shelf. The law of the adjoining state is to be applied only in the absence of an inconsistent federal law; where state law is found inconsistent, federal law, and not state law, is the applicable law for personal injury and death actions arising on the Outer Continental Shelf. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835 (1969). See *Gulf Oil Co. v. Mobil Oil Corp.*, 453 U.S. 473, 101 S.Ct. 28 70 (1981); *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S.Ct. 349 (1971). The *Rodrigue* mandate is clear: the existence of Federal law on a substantive issue bars the application of state law in resolving that issue; the federal law still is pre-eminent over state law when substantive rights on the Outer Continental Shelf are at issue. *Rodrigue*, 395 U.S. at 355-58, 89 S.Ct. at 1837-38.

There is controlling federal law on the subject of legal interest, which precludes application of the state interest statute (La. Rev. Stat. §13:4203). The federal interest statute, 28 U.S.C. §1961, provides:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefore may be levied by the marshall, in any case where, by the law of the state in which such court is held, execution may be levied for interest on judgments rendered in the courts of this state. *Such interest shall be calculated from the date from entry of the judgment, at the rate* ... (emphasis added).

The Court of Appeals interpreting the federal interest statute in cases arising out of the Outer Continental Lands Act, have consistently held that the federal interest statute

absolutely precludes an award of prejudgment interest. *Musial v. A&A Boats, Inc.*, 696 F.2d 1149, 1154 (5th Cir. 1983); *Aymond v. Texaco, Inc.*, 554 F.2d 206, 211-12 (5th Cir. 1977); *Berry v. Sladco, Inc.*, 495 F.2d 523, 528 (5th Cir. 1974); *Evans v. Chevron Oil Co.*, 438 F.Supp. 1097 (E.D. La. 1977), *aff'd per curiam* 616 F.2d 565 (5th Cir. 1980). These courts of appeals holdings are clear and specific: prejudgment interest is not to be awarded in actions arising under the OCSLA; the federal interest statute precludes as a matter of federal law an award of prejudgment interest for cases arising on the Outer Continental Shelf. Such holdings are completely consistent with *Rodrigue's* mandate: federal law (28 U.S.C. §1961) is to control over state law (La. Rev. Stat. §13:4203), where the federal law is inconsistent with the state law.

Therefore, the Court of Appeals decision in the instant matter is simply inconsistent with previous precedent on this issue, and is certainly contrary to this Honorable Court's mandate in *Rodrigue v. Aetna Casualty & Surety Co.* Accordingly, petitioner submits that the Court of Appeals award of prejudgment interest in the instant matter should be reversed.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

JOHN O. CHARRIER, JR.
ROBERT T. LEMON, II
Jones, Walker, Waechter, Poitevent, Carrere & Denegre
225 Baronne Street, 28th Floor
New Orleans, Louisiana 70112

Counsel for Shell Oil Company
Petitioner

CERTIFICATE OF SERVICE

I do hereby certify on this 17th day of November, 1983, that three copies of this Petition for Writ of Certiorari were mailed, postage prepaid, to all counsel of record in this matter.

JOHN O. CHARRIER, JR.